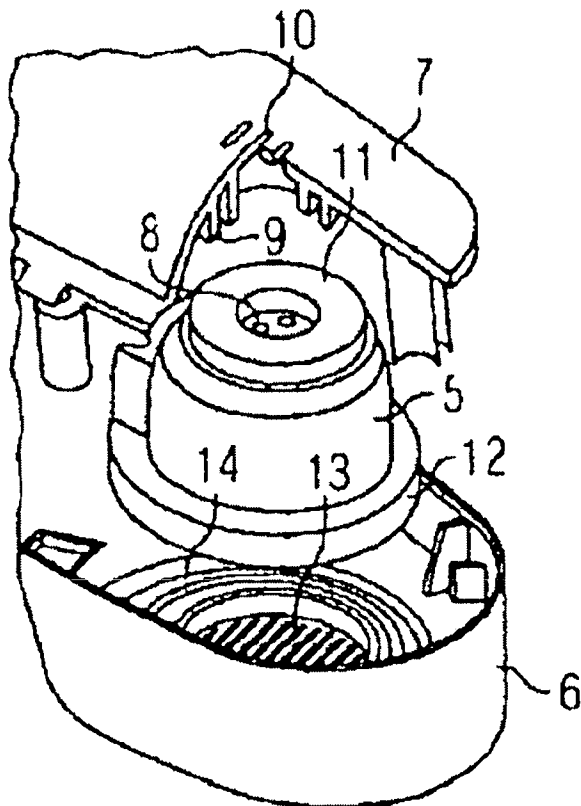


REMARKS

Applicants have carefully reviewed the Application in light of the Office Action mailed May 22, 2009. Claims 11-27 are pending in this Application. Claims 11-15, 17-20, and 23-27 stand rejected under 35 U.S.C. § 102(b) and Claims 16, 17, 21, and 22 stand rejected under 35 U.S.C. § 103(a). Claims 15 and 22 have been amended. Claims 20 and 22 have been cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

Drawing Objections

The drawings stand objected to for allegedly failing to show the details of Claims 1-27 as argued in the Applicants' Response dated May 6, 2009. Applicants disagree.



37 C.F.R. § 1.81 states, "The applicant for a patent is required to furnish a drawing of his or her invention *where necessary for the understanding of the subject matter sought to be patented ...*" (emphasis added). See also 35 U.S.C. § 113. Accordingly, the law does not require that each and every element of the claims always be illustrated.

However, Applicants submit that Specification, for example, FIG. 2 (provided herein for the Examiner's convenience) and the supporting text shows the elements of Independent Claims 11, 15, and 25. For example, the Specification discloses:

The *acoustic converter 5* features *openings 8 at the rear of its housing through which sound can escape from its membrane rear volume*. This sound is directed to the outside of the telephone

handset by means of *internal walls 9* on the *upper shell 7* of the telephone handset or on the back part of the housing of the telephone handset which form a type of channel and prevent the sound from entering the remaining part of the telephone handset. So that this sound can finally get out into the open air, *the telephone handset upper shell 7* features openings 10 which can for example be embodied as exit slots, as illustrated in the present exemplary embodiment.

So that the sound is certain not to propagate itself inside the telephone handset, *a soundproofing foam plastic ring 11* can be laid around the openings on the rear of the acoustic converter 5, which in the assembled state of the telephone handset fits between the free ends of the internal walls 9 of the telephone handset upper shell 7 and the rear side of the acoustic converter 5 and is clamped into this area.

So that the acoustic converter 5 in the telephone handset has a good hold and can also function overall, *a further sealing ring is provided for completion of the telephone handset which is disposed between the speaking side of the acoustic converter 5 and the lower shell of the telephone handset 6* and which additionally holds the acoustic converter buffered in the assembled state of the telephone handset, and *speech slots 13* are provided in the telephone handset lower shell 6 through which the user is able to speak into the acoustic converter 5. In accordance with the present exemplary embodiment *sealing ribs 14* in the lower shell 6 of the telephone handset support soundproofing in the area in front of the acoustic converter 5. (emphasis added).

Moreover, the Examiner has presented no evidence to suggest that one of ordinary skill in the art would not understand the elements recited in the pending claims.

For at least these reasons, Applicants submit that the drawings show, where necessary, elements of the pending claims and that one of ordinary skill in the art would understand the recited elements based at least on the figures and the Specification. Applicants respectfully request reconsideration and withdrawal of the objection to the Drawings.

Rejections under 35 U.S.C. § 102

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987).

Furthermore, “the identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the art cited as anticipatory by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

Claims 11-15, 17-20, and 23-27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,134,336 issued to Joel Anthony Clark (*Clark*). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

Independent Claim 11 is Patentably Distinct over Clark

Independent Claim 11 recites, in part:

an acoustical blocking element, located over the opening structure, wherein the acoustical blocking element forms an acoustic seal between the opening structure and the rear wall

In Applicants’ Remarks filed on May 6, 2009, Applicants submit that *Clark* fails to disclose, teach, or suggest the above-recited elements of Independent Claim 11. In response to Applicants’ remarks, the Examiner contends that the “openings (204, 205, 208, 210), acoustic blocking member (412, 426, 428), internal walls (Fig. 5; at 502, 504, and 506) [are] located behind the speaker at the rear of the housing (102, 113)” and thus, maintains the U.S.C. § 102 rejections. (Office Action, Page 7). Applicants submit that Examiner’s contention, and in particular, the position of the elements of *Clark* with respect to a speaker is irrelevant as the Examiner has failed to show that *Clark* teaches the above element recited in Independent Claim 11.

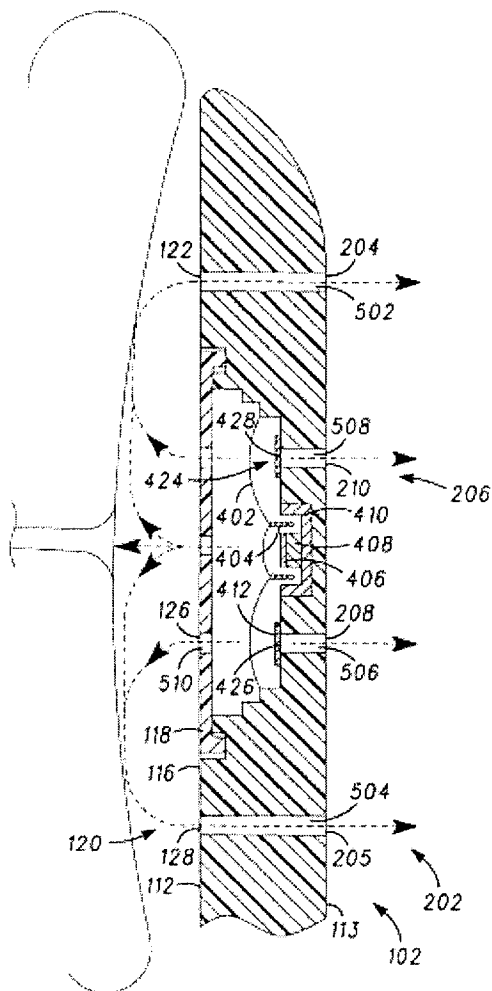


FIG. 5

Referring to FIG. 5 of Clark, provided herein for the Examiner's convenience, Clark shows a cross-section of a portable radiotelephone. (Column 3, Lines 26-27). Clark discloses that elements 426 and 428 are "openings" and element 412 is a felt piece. (Column 6, Lines 27). Thus, elements 412, 426, and 428 cannot be construed as an acoustic blocking member as the Examiner contends. Further, Clark discloses that elements 502, 504 and 506 are passages that connect two openings. For example, Clark discloses that passage 502 "connects opening 122 to opening 204...passage 506 connects opening 426 to opening 208, and a passage 508 connects opening 428 to opening 210." (Column 5, Lines 54-62). Elements 102 is not the rear of the housing as the Examiner contends. Rather, *Clark* discloses that element 102 is an upper housing "that connect the plurality of openings 120 to the plurality of openings 202." (Column 5, Lines 51-52). Thus, Applicants

submit that the Examiner has failed to demonstrate a *prima facie* case as the Examiner has failed to show an acoustical blocking element, located over the opening structure, wherein the acoustical blocking element forms an acoustic seal between the opening structure and the rear wall, as recited in Independent Claim 11.

Even assuming, *arguendo*, that the Examiner's interpretation of the elements of *Clark* are correct, which Applicants do not concede as shown above, *Clark* fails to teach or suggest an acoustic blocking element, located over the opening structure, wherein the acoustic blocking

element forms an acoustic seal between the opening structure and the rear wall. With respect to felt piece 412 and openings 426, 428, neither the felt piece 412 nor openings 426, 428 form “an acoustic seal between the opening structure and the rear wall,” as recited in Independent Claim 1. To the contrary, *Clark* clearly discloses that “[s]ound pressure waves from the rear side of diaphragm 402 **travel through the plurality of openings 424 (such as openings 426 and 428), through felt 412**, and through the passages formed in housing portion 116.” (Column 6, Lines 25-28; emphasis added). With respect to openings 502, 504 and 506 and rear surface 113, *Clark* fails to disclose an acoustic formed between these elements. Rather, *Clark* clearly teaches “[s]ound pressure waves **travel through these passages from front surface 112 to rear surface 113 to open air**.” (Column 5, Lines 55-57; emphasis added). *Clark* fails to teach any acoustic seal, but rather, clearly teaches ways for sound waves to travel through the elements the Examiner relies upon.

For at least these reasons, Applicants submit that Independent Claim 11 is not anticipated by *Clark*. Given that Claims 12-14 depend from Claim 11, Applicants submit that Claims 12-14 are also allowable. As such, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and full allowance of Claims 11-14.

Independent Claim 15 is Patentably Distinct over Clark

Amended Independent Claim 15 now recites, in part:

wherein a transition from free ends of the internal walls form a channel of the rear housing part of the telephone handset to the rear wall of the housing of the acoustic converter is sealed in a soundproof manner by a seal formed by a foam plastic ring comprising additional material,

wherein the foam plastic ring is coupled to the openings on the rear of the acoustic converter so that sound does not propagate inside the telephone handset.

Support for the amendment may be found, for example, in FIG. 2 and the supporting text of the Specification.

In the § 103 rejection, the Examiner contends that although *Clark* “teaches providing additional ring shaped sealing material (412, 726) which could be any suitable material (col. 7, lines 17-20; col. 8, lines 36-38), *Clark* does not specifically teach using foam plastic material.” (Office Action, Page 6). However, the Examiner takes Official Notice and contends that “it is known to use felt, foam, or any suitable material to seal an earphone, and thus provide acoustic damping.” Applicants disagree.

First, Applicants submit that *Clark* fails to teach wherein a transition from free ends of the internal walls form a channel of the rear housing part of the telephone handset to the rear wall of the housing of the acoustic converter is sealed in a soundproof manner by a seal formed by a foam plastic ring comprising additional material, as recited in Independent Claim 15.

Secondly, even if felt pieces 412, 726 can be construed as a “ring shaped sealing material” as the Examiner contends, Applicants submit that felt piece 412, 726 are not coupled to the openings on the rear of the acoustic converter so that sound does not propagate inside the telephone handset. For example, *Clark* clearly discloses that “[s]ound pressure waves from the rear side of diaphragm 402 **travel through the plurality of openings 424 (such as openings 426 and 428), through felt 412,** and through the passages formed in housing portion 116.” (Column 6, Lines 25-28; emphasis added). Thus, felt piece 412 cannot provide acoustic damping as the Examiner contends.

Furthermore, referring to the relied upon sections, *Clark* does not teach providing additional ring shaped sealing material (412, 726) which could be any suitable material as the Examiner contends. To the contrary, *Clark* discloses

[t]he size and number of openings (i.e., the plurality of openings 120) were chosen to achieve the desired frequency response...It is understood **that the size and the number of these openings may be chosen in combination with felts, screens, meshes, or other suitable materials that acoustically resist air flow to achieve a desired frequency response.** (Column 7, Lines 17-20; emphasis added).

Similarly, *Clark* discloses that diaphragm 742 can include “[f]elts, meshes, screens, and other suitable materials may be disposed and used.” (Column 8, Lines 36-38). *Clark* provides alternative materials for the openings and diaphragm and not of the felt pieces 412, 726.

Applicants also submit that in taking Office Notice, the Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support taking Official Notice and Applicants should be presented with the explicit basis on which the Examiner regards the matter as subject to official notice. *See* M.P.E.P. § 2144.03(B). As another example, if the Examiner is relying on personal knowledge, an affidavit supporting must be provided. *See* M.P.E.P. § 2144.03(C). Applicants submit that no specific factual findings or affidavit supporting the Examiner’s Official Notice are on record.

For at least these reasons, Applicants submit that Independent Claim 15 is not anticipated by *Clark*. Given that Claims 12-14 depend from Claim 11, Applicants submit that Claims 12-14 are also allowable. As such, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and full allowance of Claims 11-14.

Independent Claim 25 is Patentably Distinct over Clark

Independent Claim 25 recites, in part:

a telephone handset comprising a rear housing part with internal walls;
an acoustic converter comprising a housing component comprising a rear wall, wherein the rear wall includes a first opening;
wherein the internal walls of the rear housing part of the telephone handset forms a soundproofing channel around the first opening; and
wherein the rear housing part of the telephone handset comprises a second opening for guiding sound through the channel to outside of the telephone handset.

According to the Examiner, regarding Claim 25, “Clark teaches the acoustic converter according to claim 6, wherein the walls are formed concentrically.” (Office Action, Page 4). Applicants respectfully submit that the Examiner’s lack of specificity in rejecting Claim 25 does not comply with 37 C.F.R. § 1.104 or MPEP § 706.02(j). 37 C.F.R. § 1.104 states:

In rejecting claims for want of novelty or obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be *clearly explained* and each rejected claim specified. 37 C.F.R. § 1.104(c)(2) (emphasis added).

Here, the Examiner fails to demonstrate a *prima facie* case as the Examiner has failed to show where *Clark* teaches the above-recited elements of Independent Claim 25. Furthermore, the Examiner states that *Clark* teaches certain elements of Claim 6, which makes no sense, as Claim 6 is not currently pending in the Applicants, which makes it impossible for Applicants to adequately respond to the rejection.

Applicants submit that *Clark* fails to teach or suggest every element of Independent Claim 25. Given that Claims 26 and 27 depend from Claim 25, Applicants submit that Claims 26 and 27 are also allowable. Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and full allowance of Claims 25-27.

Rejections under 35 U.S.C. § 103

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* “Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show

that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Claims 16, 17, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Clark*. Claim 22 has been cancelled, rendering the rejection moot. Given that Claims 16, 17, and 21 depend from Claim 15, shown allowable above, Applicants submit that Claims 16, 17, and 21 are also allowable. As such, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and full allowance of Claims 16, 17, and 21.

No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the references relied upon. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the rejections asserted in the present Office Action.

CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of pending Claims 11-27.

Applicants enclose a Petition for One Month Extension of Time and authorize the Commissioner to charge the \$130.00 Extension fee to Deposit Account No. 50-2148 of Baker Botts L.L.P. Applicants believe there are no additional fees due at this time; however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2684.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicants



Brian K. Prewitt
Reg. No. 60,135

Date: September 22, 2009

SEND CORRESPONDENCE TO:
BAKER BOTTS L.L.P.
CUSTOMER ACCOUNT NO. **31625**
512.322.2684
512.322.8383 (fax)